

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NORTHWEST ADMINISTRATORS, INC.,

Plaintiff,

v.

MIDLAND TRUCKING, Division of JIMCO,  
Inc., a Washington Corporation,

Defendant.

CASE NO. C07-0107-MJB

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

I. INTRODUCTION

The plaintiff brought suit to recover trust fund contributions, liquidated damages, interest, attorneys fees and court costs based upon the defendant's alleged delinquency on its contributions after a court-ordered audit. The plaintiff has moved for summary judgment on the grounds that the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1132(c)(1) ("ERISA"), mandates defendants to follow the collective bargaining agreement with Teamsters Local 760 ("Local 760") (Dkt. No. 13, Ex C and D) and Washington Teamsters Welfare Trust ("Welfare Trust"). Dkt. No. 13, Ex. E.

1 The parties consented to have this matter decided by the undersigned United States Magistrate  
2 Judge, pursuant to 28 U.S.C. § 636 (c). Having reviewed plaintiff's motion and opposing  
3 memorandum, supporting materials, and the balance of the record, the Court GRANTS plaintiff's  
4 motion for summary judgment. Dkt. No. 8.

## II. PROCEDURAL HISTORY

6 On January 23, 2007, plaintiff filed a Complaint to Collect Trust Funds Pursuant to Audit  
7 against the defendant Midland Trucking. Dkt. No. 1. On March 8, 2007, the plaintiff, Northwest  
8 Administrators, Inc., filed its answer to the plaintiff's complaint. Dkt. No. 4. On March 25, 2007,  
9 Plaintiff moved for summary judgment supported by declarations from Donald Ditter and Thomas A.  
10 Leahy. Dkt. Nos. 8, 9 and 10. Defendant's opposing memorandum (Dkt. No. 12) was filed along  
11 with a declaration of James A. Sherrell on May 11, 2007. Dkt. No. 13. On May 22, the plaintiff filed  
12 its reply. Dkt. No.15.

13        In a prior action before this Court (C06-400-JPD), the Honorable James P. Donohue outlined  
14 the undisputed history between Teamsters Local 760 and the defendant Midland Trucking, their  
15 collective bargaining (“CBA”)and Trust Fund agreements. In that suit, Judge Donohue found the  
16 Trust Fund agreement provided “broad rights to compel an audit of relevant records, and that the  
17 plaintiffs have “ sole authority” to interpret the scope [of the audit] under the Subscription  
18 Agreement.” Judge Donohue rejected defendant Midland’s argument that it should not be required to  
19 submit to the audit.

### III. SUMMARY JUDGMENT STANDARD

21 Summary judgment under Fed. R. Civ. P. 56 may be granted if there is no genuine issue of  
22 material fact and the moving party is entitled to judgment as a matter of law. An issue of material fact  
23 is one that affects the outcome of the case and requires a trial to resolve differing versions of the truth.  
24 *Admiralty Fund v. Hugh Johnson & Co.*, 677 F.2d 1301, 1305-06 (9th Cir. 1982). In deciding the  
25 motion, the court views the evidence in the light most favorable to the non-moving party, and draws

1 all reasonable inferences in that party's favor. *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S.  
 2 464, 473 (1962); *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630-31 (9th  
 3 Cir. 1987). To defeat a motion for summary judgment, the non-moving party must make more than  
 4 conclusory allegations, speculations or argumentative assertions that material facts are in dispute. *Id.*  
 5 at 630-31. However, the non-moving party must respond to an adequately supported motion by  
 6 showing that a genuine issue of material fact exists; if the response falls short of that, summary  
 7 judgment should be granted. *Id.* Fed. R. Civ. P. 56(e).

#### 8 IV. BACKGROUND

9 The plaintiff argues that ERISA mandates defendant Midland to follow the collective  
 10 bargaining agreements. *See*, 29 U.S.C. §1145 and *Central Pennsylvania Teamster Pension Fund v.*  
 11 *McCormick Dray Line, Inc.*, 85 F.3d 1098 (3rd Cir. 1996). Following a court-ordered audit of  
 12 defendant Midland's payroll records, the plaintiff as administrator of the CBA and Trust Fund  
 13 agreements determined that defendant Midland owed \$27,964.00 and was delinquent under the terms  
 14 of the collective bargaining agreement for the time period of January 1, 2002 through May 31, 2005.  
 15 Dkt. No. 8 at 10.

16 In support of the contractual obligation and the audit of defendant Midland's records, Plaintiff  
 17 proffers the declaration of Donald Ditter and the field auditor's report, working file and summary.  
 18 After reviewing reports from 2000 through 2005, the auditor summarized the issues as failures to  
 19 report the following: all eligible employees, a NBU employee, a part-time employee and a termed  
 20 employees (a total of 13 in number). Dkt. No. 9 Ex. G at 5-6. In his declaration, Thomas A. Leahy  
 21 explains how the sum of \$27,964.00 in contributions was determined, and also adds liquidated  
 22 damages, interest and attorney fees for a total sum of \$40,800.09. Dkt. No. 9 Ex. H. Moreover,  
 23 defendant Midland has made a partial payment of \$6,600.00. Dkt. No. 16 Ex. I.

24 Defendant Midland Trucking contends that it is not liable for damages and asserts that there  
 25 are two material issues of fact, (1) defendant Midland Trucking is not the party of interest because it  
 26 ORDER GRANTING SUMMARY JUDGEMENT - 3

1 was not a signatory to the collective bargaining agreement or Trust Fund, and (2), that two of the  
 2 employees it is responsible for under the audit analysis are not covered employees. Dkt. No. 13 at 4  
 3 Ex. F and G.

#### 4 V. DISCUSSION

##### 5 A. *Collateral Estoppel*

6 Collateral estoppel, also known as claim preclusion, bars re-litigation of issues actually  
 7 adjudicated in previous litigation between the same parties. *Steen v. John Hancock Mutual Life*  
 8 *Insurance Company*, 106 F.3d 904 (9th Cir.1997). The plaintiff urges that defendant Midland has  
 9 waived any right or is estopped from claiming it does not have a contract with Teamsters Local 760 or  
 10 the Trust Fund and that a prior summary judgment satisfies the litigation requirement. *Id.* The  
 11 plaintiff correctly cites to the four factors the court must consider under the doctrine of collateral  
 12 estoppel:

- 13       (1)    Is there a substantial overlap between the evidence or argument to be advanced in the  
             second proceeding and that advance in the first?
- 14       (2)    Does the new evidence or argument involve the application of the same rule or law as  
             that involved in the prior proceeding?
- 16       (3)    Could pretrial preparation and discovery related to the matter presented in the first  
             action reasonably be expected to have embraced the matter sought to be presented in  
             the second?
- 18       (4)    How closely related are the claims involved in the two proceedings?

19 *Id.* At 912.

20       The defendant frames this issue as not being a “party in interest.” Defendant Midland  
 21 argues that it is not bound by the CBA or Trust Fund agreement because it was not a signatory to that  
 22 agreement. Dkt. No. 13, Ex. E. The plaintiff concedes that Midland Transportation, not defendant  
 23 Midland Trucking, is the signatory on the contracts with the union, but argues that defendant Midland  
 24 Trucking and Midland Transportation are the same company, sharing the same business address, and  
 25 the same president. Dkt. No. 15 at 6. Additionally, Plaintiff argues that defendant Midland has

1 already admitted to having a contract with Local 760 and the Trust Fund supporting this by the answer  
2 filed in the previous litigation. Dkt. No. 16, Ex. B at 2. Further, the plaintiff argues that the president  
3 of Midland Trucking and formerly president of Midland Transportation, James A. Sherrell, has  
4 admitted in the previous litigation to the contractual relationships under the CBA and the Trust Fund.  
5 Dkt. No. 12, Ex. F.

6 Legal privity is a conclusion “designating a person so identified in interest with a party to  
7 former litigation that he represents precisely the same right in respect to the subject matter involved.  
8 *In re Schimmels v Schimmels*, 127 F.3d, 875 (9th Cir.1997) (*Citations omitted*). Under these facts,  
9 the Court is satisfied that there is legal privity between defendant Midland Trucking and Midland  
10 Transportation, the signatory to the two agreements at issue, for purposes of collateral estoppel.

11 Substantial overlap exists in the instant case because the Complaint to Compel Audit in this  
12 case pertains to the same time period, the same CBA and Trust Fund. Dkt. No. 15 Ex. A. As the  
13 plaintiff argues, nothing has changed in that the parities continue to be governed by ERISA. The  
14 obligation under the collective bargaining agreement that gave rise to the audit is inseparable from this  
15 claim. In fact, the plaintiff points to the defendant making a partial payment of \$6,600.00 for  
16 delinquent contributions. The Court, therefore finds that defendant Midland is estopped from  
17 asserting it does not have to make contributions under its agreements with Local 760 and Welfare  
18 Trust.

19 The only potential factual dispute pertains to defendant Midland’s objection to the inclusion of  
20 two employees, yet as the plaintiff argues, defendant Midland has provided no “valid testimony” in  
21 support of its objection. Defendant Midland has submitted a hand-written statement with no other  
22 information or explanation. See, Dkt. No. 13 Ex G. The plaintiff argues that the records provided  
23 cannot be relied upon as properly authenticated, or supported by time-sheets or payroll records. Dkt.  
24 No. 15 n.6.

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26 ORDER GRANTING SUMMARY JUDGEMENT - 5

1       Defendant's argument for not making contributions for Earl Cooksey and Harold Barnhard is  
2 based upon its assertion that Cooksey was not working in the bargaining unit from January 1, 2002  
3 through May 31, 2005, and that Barnhard periodically resigned. These assertions must be  
4 corroborated. Proper support may be found in payroll records, which the plaintiff asserts has not been  
5 done for either employee. Additionally, the plaintiff argues that Cooksey is a covered employee  
6 inasmuch as the Subscription Agreement between the parities that applies to non-bargaining unit  
7 employees also requires defendant Midland to make contributions. Support for this is found in Donald  
8 Ditter's Declaration. Dkt. 16, Ex. D at 4. As area manager for Northwest Administrators, Ditter has  
9 custody of the Trust Fund records and files and states that these employees are eligible. "Eligible  
10 employees were defined as 'any employee of the Bargaining Unit who was compensated for eighty(80)  
11 hours or more in the preceding month.'" *Id.* The handwritten statement from Cooksey submitted by  
12 the defendant does not address the key factual predicate, the number of hours worked, and thus does  
13 not raise a material fact. In the absence of payroll records, defendant Midland has not raised a genuine  
14 issue of material fact regarding both employees, Cooksey and Barnhard.

15       *B. Reasonable Attorney's Fees*

16       The plaintiff seeks an award of reasonable attorney's fees and costs in the amount of which is  
17 supported by the declaration of Thomas A. Leahy. Dkt. No.16, Ex. K. His declaration and billing  
18 summary sets forth the fees incurred and costs in the amount of \$7,575.50 and \$415.00, respectively.  
19 While the defendant opposes this award, no substantive or legally supportable reason is argued.  
20 ERISA gives the Court authority to award attorney's fees and costs. 29 U.S.C. §1132 (g)(1).  
21 *Hummell v. S.E. Rykoff & Co*, 634 F2d 446 (9th Cir. 1980) sets criteria for such an award:

22       (1) The degree of the opposing parties' culpability or bad faith; (2) the ability of the opposing  
23 party to satisfy an award of fees; (3) whether an award of fees against the opposing party  
24 would deter others from acting under similar circumstances, (4) whether the parties requesting  
fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a  
significant legal question regarding ERISA and the relative merits of the parties' positions.

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26 ORDER GRANTING SUMMARY JUDGEMENT - 6

1 All five factors in this Court's view favor an award of fees and costs. The defendant has  
2 opposed the contribution required by the court-ordered audit and arguably invited this litigation.  
3 While the plaintiff has not argued bad faith, it appears to the Court that the declaration of James  
4 Sherrell demonstrates that Defendant Midland was fully aware of the contractual obligations adopted  
5 by the Midland Transportation under the CBA and Trust Fund agreements. Accordingly, each of the  
6 collateral estoppel factors are met, largely because this case is no more than an enforcement of the  
7 underlying action which gave rise to the court-ordered audit in the first instance.

8 **IX. CONCLUSION**

9 For the reasons stated, the plaintiff's motion for summary judgment is GRANTED. Judgment  
10 to the plaintiff is as follows: \$21,364.00 for contributions, \$5,592.80 for liquidated damages,  
11 \$9,786.79 for interest, \$7574.50 for attorneys' fees and \$415.00 for costs, for a total of \$44,733.09.

12 DATED this 29<sup>th</sup> day of June, 2007.

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16 MONICA J. BENTON  
United States Magistrate Judge  
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